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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

RACHEL N.,

Petitioner,

v.

THE SUPERIOR COURT OF THE
COUNTY OF SAN BERNARDINO,

Respondent;

SAN BERNARDINO COUNTY
DEPARTMENT OF CHILDREN'S
SERVICES,

Real Party in Interest.

E035156

(Super.Ct.No. J-184561)

OPINION

APPEAL from the Superior Court of San Bernardino County. Raymond L.
Haight, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

William E. Drake for Petitioner.

No appearance for Respondent.

Ronald D. Reitz, County Counsel, and Dawn Stafford, Deputy County Counsel,
for Real Party in Interest.

1. Introduction

In this petition for extraordinary writ,¹ Rachel N. (mother) claims the juvenile court erred in terminating her reunification services and setting the Welfare and Institutions Code section 366.26 hearing.² Mother claims the court erred in failing to extend reunification services for another six months. However, because substantial evidence supported the court's finding that there was no substantial probability that the child would be returned to mother, we conclude that the juvenile court did not abuse its discretion in terminating reunification services. We deny mother's petition.

2. Factual and Procedural History

Mother and Shane R. (father) have never been married, but the two share custody of their child, Jaden R. On September 9, 2002, after eight-month-old Jaden returned from his weekly visit with father, mother noticed about five bruises on Jaden's buttocks, back, and leg. Mother reported the matter to the police, who in turn contacted the San Bernardino County Department of Children's Services (DCS).

During her interview with the social worker, mother alleged that father used drugs and was mentally ill. Mother also alleged that father abused her physically and encouraged her to use drugs. DCS had conducted two prior investigations after receiving

¹ California Rules of Court, rule 39.1B.

² All further statutory references will be to the Welfare and Institutions Code unless otherwise stated.

reports of drug use, domestic violence, and neglect. DCS took Jaden into protective custody.

The social worker also learned that mother was married to Gregory N., the father of Jaden's stepsister, Teana N. Mother and Gregory N. have been separated since 1997. Teana currently resides with her paternal aunt in Washington.

On October 2, 2002, DCS filed a dependency petition on Jaden's behalf, containing allegations of father's physical abuse, substance abuse, and mental illness and mother's substance abuse and neglect.³ As recommended by DCS, the juvenile court detained Jaden and continued his placement out of parental custody.

After Jaden's removal, he received a physical examination. Jaden's examination revealed a fractured skull and an object in his stomach that required immediate surgery. Mother claimed that the child fractured his skull by falling off the sofa bed. Based on these injuries, DCS filed an amended information including additional allegations of neglect.⁴

At the jurisdictional hearing, the court found the allegations, with the exception of the skull fracture allegations, true as amended by the parties' stipulation. The court placed Jaden with his paternal grandmother. The court ordered parents to participate in a reunification plan.

³ Section 300, subdivisions (a) and (b).

⁴ Section 300, subdivisions (a), (b), and (e).

At the six-month review hearing on June 9, 2003, the court extended reunification services contrary to the social worker's recommendation. The social worker reported that parents had made minimal progress in their reunification plan. The social worker also informed the court that, on August 9, 2003, mother and two others forcefully removed Teana from her paternal aunt's home. After taking Teana, mother moved to Wyoming, where she stayed at her mother's three-bedroom mobile home with her mother, her mother's boyfriend, her brother, Teana, and her new baby (born November of 2003). Teana's paternal aunt accused mother of taking Teana to qualify for welfare benefits and moving to Wyoming to prevent DCS from removing Teana.

On January 26, 2004, during the 12-month review hearing, the court found that mother had failed to complete her reunification plan. The court terminated services. The court then set the matter for a hearing under section 366.26.

3. Discussion

Mother claims the juvenile court erred in denying her request to extend reunification services for another six-month period.

At the 12-month review hearing under section 366.21, subdivision (f), the court, in applying section 361.5, subdivision (a)(2), for children under three years of age, found that mother failed to participate regularly and make substantial progress in the court-ordered plan. The court also found that there was no reasonable likelihood that Jaden would be returned to mother within the allotted time frame. Based on these findings, the court denied mother's request for an additional six months of reunification services.

In reviewing a juvenile court’s ruling, we consider the entire record, resolving all conflicts in favor of upholding the ruling, to determine whether it contains substantial evidence—i.e., evidence that is reasonable, credible, and of solid value—to support the court’s finding.⁵ If supported by substantial evidence, the court’s ruling will not be disturbed on appeal absent a clear showing that the court exercised its wide discretion in an arbitrary, capricious, or patently absurd manner.⁶

Under section 361.5, subdivision (a), when a child is under three years of age at the time of the initial removal, reunification services for the parent must be limited to a period of six months.⁷ At the six-month review hearing, the court may extend services if the court finds that there is a substantial probability that the child may be returned to his or her parent or legal guardian within six months.⁸ At the 12-month hearing, because the court has exceeded the time specified in section 361.5, subdivision (a), the court must apply a more rigorous standard. “The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended

⁵ *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763; see also *Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.

⁶ *In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.

⁷ See also *Dawnel D. v. Superior Court* (1999) 74 Cal.App.4th 393, 398.

⁸ Section 366.21, subdivision (e).

period of time or that reasonable services have not been provided to the parent or legal guardian.”⁹ In order to make this finding, all the following criteria must be present: (1) the parent or legal guardian has consistently or regularly visited the child; (2) the parent or legal guardian has made significant progress in resolving the problems leading to the child’s removal; and (3) the parent or legal guardian has demonstrated both the capacity to complete the objectives of his or her treatment plan and to provide for the child’s needs and safety.¹⁰ The court may not extend services beyond 18 months of the child’s initial removal.¹¹

The court did not abuse its discretion in denying mother’s request for additional services because substantial evidence supported the court’s finding that there was no substantial probability that Jaden would have been returned to mother within six months. Specifically, substantial evidence supported the court’s finding that mother failed to make significant progress in resolving one of the problems leading to child’s removal.

The court found that, while mother completed certain components of her treatment plan by obtaining services through the Department of Family Services in Wyoming, mother failed to complete the drug treatment requirements. In addressing mother’s drug problem, the court initially ordered mother to complete a 12-step program, comply with all required drug tests, and demonstrate her ability to live free from drug dependency. At

⁹ Section 366.21, subdivision (g)(1).

¹⁰ Section 366.21, subdivision (g)(1).

[footnote continued on next page]

the six-month review hearing, the court also ordered mother to complete an outpatient drug treatment program. During the first six-month period, although mother participated in the 12-step program, mother failed to remain free from drugs. Days before the six-month hearing, mother tested positive for cannabinal.

After mother's move to Wyoming, mother failed to comply with her weekly drug tests. During a period of about four months, mother attended only four drug tests. Mother's sporadic attendance in this important aspect of her treatment plan indicates that she has failed to make substantial progress.¹² Therefore, although mother attended a 12-step program, the court reasonably found that mother had not demonstrated that she had resolved her drug abuse problem.

Mother also failed to complete other components of her treatment plan. Throughout the dependency, mother failed to maintain contact and cooperate with DCS in achieving the objectives of her plan. The record shows that, before and after her move to Wyoming, mother has failed to make visitation with Jaden a priority in her life. The record also indicates that, although mother obtained services in Wyoming, some of the services did not satisfy DCS's standards for her treatment plan. Mother, who had been heavily dependent on other family members in the past, still could not demonstrate her capacity to provide an adequate home and meet the needs of Jaden and his stepsiblings.

[footnote continued from previous page]

¹¹ Section 361.5, subdivision (a)(3); section 366.21, subdivision (g)(1).

¹² See *Dawnel D. v. Superior Court*, *supra*, 74 Cal.App.4th at page 398.

We conclude that substantial evidence supported the court's finding under section 366.21, subdivision (f) and (g). The court therefore acted well within its authority in terminating mother's reunification services and setting the selection and implementation hearing under section 366.26.¹³

4. Disposition

We deny mother's petition.

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s/Gaut
J.

We concur:

s/Hollenhorst
Acting P. J.

s/Richli
J.

¹³ Section 366.21, subdivision (g)(2).